***United States Court of Appeals***

***for the Second Circuit***


# APPELLEE'S BRIEF

# 75-7406



UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT
NO.75-7406

B

EUGENE LEWIS,GLADYS CROOM,etc.

Plaintiffs-Appellees,

v.

JOSEPH A. WALSH, etc., et al

Defendants,

PETER FREER and FRANCIS MATTHEWS,

Defendants-Appellants

APPEAL FROM VERDICT AND JUDGMENT OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF CONNECTICUT

BRIEF OF PLAINTIFF - APPELLEE, JOHN CROOM

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## ISSUES

1. Is it for the jury, after hearing all the evidence, to determine if a special defense of good faith belief that an arrest was justified is to be believed?

2. May the Court, with appropriate instructions, resubmit to a jury an apparent conflict between the answers to specific interrogatories and a general verdict awarding damages for violation of civil rights?

3. Is it proper, and indeed essential, for the jury to be informed of the disposition of criminal charges against the Plaintiff in an action claiming, inter alia, violation of civil rights on account of a false arrest and false imprisonment?

## III

## STATEMENT OF THE CASE

The plaintiff's action is for violation of civil rights stemming from a false arrest and false imprisonment on charges of receiving stolen goods. The basic facts concerning plaintiff's arrest are either admitted or undisputed.

At about 12:30 a.m. on September 21, 1971 the Bridgeport Police Department received an anonymous call to the effect that a safe and some typewriters were being wheeled across a major thoroughfare in Bridgeport toward a large public housing project. The anonymous caller apparently identified Jeffrey Croom, the son of the plaintiff-appellee John Croom, as one of those wheeling the items along with one Kevin Blackwell and "a girl in a red dress". The anonymous caller further indicated that the goods were being wheeled toward or into an apartment. John Croom rented the apartment, but it was also occupied by his daughter and son-in-law and his son, Jeffrey. Between 3 and 5 minutes after the anonymous call was received at Police Headquarters the defendants-appellants entered the Croom apartment without a warrant. (Appellants brief pages 1-2). Notwithstanding the claims that Jeffrey Croom was a "known burglar", which have no support whatever in the record since the defendants had no knowledge of Jeffrey Croom's record, the sole and only reason why the plaintiff-appellee John Croom was arrested was simply stated as follows:

> "Question (by Plaintiff's counsel) And that's why you arrested him (John Croom) because the apartment was in his name? Is that correct?
>
> Answer (by defendant Freer) Yes, sir.

***

Question You arrested him because you found items you thought were stolen in the apartment that was rented to him?

Answer Yes, its his apartment, yes, sir.

***

Question You had no knowledge at that time of whether he knew the items were there or if they had been brought in by somebody else, did you?

Answer Well, didn't I answer that before, saying he didn't know whose they were, who they belonged to?
(Joint appendix hereinafter "A" 16-17)

Notwithstanding the fact that entry into the Croom apartment was based on information admittedly received from an anonymous telephone call, the defendants filed a report as of 12:34 a.m. on September 21, 1971 which stated:

> "Acting on speedy information from a reliable source whose information in the past had resulted in arrests we went to building 32, apartment 13, Marina Village, the apartment of John Croom...." (A61)

That clearly and admittedly false characterization of the anonymous telephone caller was used to justify the entry into the Croom apartment and led to plaintiff's incarceration for 10 days, on a $6,000.00 bond. After that time he was presented in court and the charges were nolled.

After hearing the evidence the jury was charged and given the interrogatories appearing at A56-57. The first 10 interrogatories have to do with finding of specific facts concerning various aspects of the case each of which could be answered either "yes" or "no", and a final set of questions called for general verdicts of dollar amounts against both defendants if the jury had found that they had violated John Croom's constitutional rights on one or more grounds.

The jury returned a verdict which found that neither defendant had probable cause to believe that John Croom had committed the offense of receiving stolen goods. It was unquestionably within their province to so find and, in view of the testimony set forth above, it would have been astonishing had they not so found. The first time the jury came out it answered question 6 and 8 in the affirmative, i.e. that the defendants believed in good faith that they had probable cause to make the arrest but they awarded $10,650.00 damages, (apparently $1,000.00 per day for the incarceration and $650.00 for the counsel fees incurred by John Croom to defend himself below), as compensatory damages for violation of John Croom's civil rights arising out of his arrest.

The court found the answers inconsistent and resubmitted the issue to the jury with the following careful instructions:

> "Now again I am not suggesting how you should resolve this, but I am just trying to indicate the inconsistency that is apparent on the face of these responses, so let me try to go over it once more. You told us that you believe the officers did not have probable cause to make the arrest. As I told you in the charge, the next question is do they have a defense to liability, and questions 6 and 8 are the questions that ask you to tell us whether you find that they have established their burden by a preponderence of the evidence, showing that there was the defense, and just to state that again, it is a defense that is made out if they believe in good faith that they had probable cause to arrest and that there was a reasonable basis for that belief, so if you think the defense is made out then they are not liable and no damages can be awarded.
>
> If you think they are liable and that damages are to be awarded it can only be because they have not established the defense to your satisfaction.

> So in view of that inconsistency, I am going to ask you resume your deliberations and see if you are able to respond to these interrogatories in a way that clears up the inconsistency.
>
> I hope that is clear and again let me reemphasize that I am not suggesting that you must shift a particular answer and certainly not which particular answer you ought to shift, but there is the inconsistency there, and in view of that I am going to ask you to resume your deliberations and I will return the responses to you and see how you do. (Jury excused 4:43 p.m.)"
> Transcript of March 27, 1975(at 588-589)
>
> [The supplemental transcript of March 27, 1975 was overlooked by the stenographer in his original typing and was received by counsel on October 21, 1975. Counsel agreed that because of its importance to the issues in this case it should be considered as though it was part of the joint appendix.]

The jury, after further deliberation, rendered the verdict which appears at A56-57 in which the answers to questions 6 and 8 were rendered in the negative. The court accepted the consistent verdict and awarded judgment in the amount of $10,650.00 to John Croom.

## IV

## ARGUMENT

### POINT I

### IT IS FOR THE JURY TO DETERMINE THE ISSUES OF FALSE ARREST AND IMPRISONMENT AND WHETHER OR NOT THE SPECIAL DEFENSE OF "GOOD FAITH" SHOULD BE BELIEVED

The only issue before the Court below, and this Honorable Court, with regard to the appellant John Croom was whether or not there was probable cause to arrest him in the first place on the charge of receiving stolen goods and whether or not the officers could, in good faith, have believed that they had probable cause to arrest. That much is impliedly admitted by the defendants in their brief by their citation of Bivens v. Six Unknown Agents, 456 F. 2nd 1339 (CCA 2, 1972) The plaintiff-appellee, of course, concurs. The defendants seemed to imply, however, that those questions might be decided as a matter of law rather than by the jury and they further seem to take the position that if the jury should choose to believe that Jeffrey Croom brought stolen goods into his father's house some 3 to 5 minutes prior to the time the police entered the house, that fact alone requires a directed verdict against the plaintiff. It is hardly surprising that they cite no law for that proposition.

There is no indication whatever in the record that John Croom knew that his son was a burglar although the defendants keep referring to him as a "known burglar". As noted above, the defendants admitted that they did not know anything about Jeffrey's record at the time they entered the house. The mere fact that he had a record does not make him a "known" burglar. The allegedly stolen goods were hidden in a pantry off the kitchen where John

Croom was eating his supper. There is nothing in the record to indicate that John Croom could have seen into the pantry. All of the cases cited by the Defendants under the first argument of their brief deal with situations in which a trier of fact could or did find guilty knowledge or constructive possession of stolen goods sufficient to sustain a determination of guilt. The jury in the present case, after hearing the evidence, found no such basis.

Since the defendants themselves admitted that the sole and only basis for arresting John Croom was that he happened to be the lessee of the apartment into which the allegedly stolen goods had just been brought, the jury's answer to interrogatory number 5 could hardly have been otherwise.

It follows that whether or not the officers could, in good faith, have believed that they had a basis for arresting John Croom for receiving stolen goods was a function of the jury's appraisal of their candor and all the testimony given in the case.

Whether the jury was confused by the initial charge; or awarded compensatory damages-while initially finding that the officers had a good faith basis for believing the arrest was proper in order to explain the failure to award punitive damages; or for some other less plausible reason is a subject of speculation which cannot be resolved. The fact remains that, after resubmission on a careful charge, the jury deliberated and found that the officers did not have a good faith basis for believing that there was just cause for the arrest. Since the demeanor of the witnesses and their credibility are crucial elements bearing on that

conclusion it is unquestionably within the jury's province to find the issues on the special defense of good faith one way or another. It did.

## POINT II

### THE COURT'S RESUBMISSION OF INTERROGATORIES TO THE JURY WAS PROPER.

The assumption upon which the defendants' second argument rests is that the court submitted a request for a special verdict under Rule 49(a) to the jury rather than a request for a general verdict accompanied by answers to written interrogatories pursuant to Rule 49(b). The interrogatories themselves make it perfectly clear that they were not in such form that "the jury's function is solely fact finding" (Griffin v. Matherne 471 F. 2nd 911 (CCA 5, 1973) (footnote 6 at 917 emphasis added). In the Griffin case, which dealt with a rather complex question of comparative negligence under maritime law, an inconsistent verdict was remanded for a new trial and the court specifically declined to comment on the question of resubmission to the jury. (at 917) The court in Griffin made note, however, that Rule 49(b) specifically provides for reconsideration by the jury if there is an inconsistency between one or more special answers and a general verdict. The issue was moot in Griffin since the court chose to render a judgment based on the specific interrogatories. Griffin, however, and the clear wording of Rule 49(b) make it clear that the interrogatories in this case were precisely the type contemplated to be capable of resubmission. See Ressler v. United States Marine Lines, Inc., F. 2nd (2D Cir. May 6, 1975) (Slip Op.3441).

As noted by the court below, there appears to be general authority for resubmission of inconsistent general or specific verdicts, or verdicts which are clearly contrary to instructions, even if this were not a clear Rule 49(b) situation. Just such a thing occurred in University Computing Co. v. Lykes Youngstown Corp., 504 F. 2nd. 518, 546-47 (5th Cir. 1974).

The defendants concede that if the jury was given a request for a general verdict accompanied by answers to interrogatories the rule itself provides specifically for resubmission in the event of a contradiction. The hallmark of the distunction between Rule 49(a) and Rule 49(b) is that the former is devoted solely to fact finding and the latter has the dual function of application of the law to the facts. (Griffin at 917) Interrogatories 1 through 10 are devoted to specific fact finding. But interrogatories 11 through 14 call for general verdicts of dollar amounts for specific violations committed by specific defendants. It would be hard to conceive of a more classic example of special interrogatories accompanying a general verdict as contemplated by Rule 49 (b).

The function of the general verdict accompanied by answers to interrogatories is discussed at length in 5A Moore's Federal Practice 2220, paragraph 49.04. The discussion in the text of the numerous cases illuminating the text makes it clear that:

> "Every reasonable intendment should, however, be indulged in favor of the general verdict in an effort to harmonize it with the answers to the interrogatories, and the latter should be held controlling only 'where the conflict on a material question is beyond reconciliation

on any reasonable theory consistent with the evidence and its fair inferences.' Of course, if the answers are inconsistent with each other, and one or more with the general verdict, the court cannot enter judgment upon the basis of any of the findings, and as provided by the Rule, should not direct the entry of a judgment at all but should return the jury for further deliberations or should order a new trial." at 2225 through 2227.

In this case, the court instructed the jury on the law and left it to the jury to find certain specific facts as well as a general verdict amount. Thus the case falls squarely within the provisions of section 49(b) and was proper for resubmission to the jury.

POINT III

EVIDENCE OF TERMINATION OF CRIMINAL CHARGES IN PLAINTIFF'S FAVOR WAS PROPERLY ADMISSIBLE TO THE JURY

The defendants protest that the jury is not entitled to know that the criminal charges were disposed of in John Croom's favor.

One of the elements of Crooms claim for violation of civil rights by virtue of a false arrest, malicious prosecution and false imprisonment which he must prove is that the charges against him were disposed of in his favor. Fusario v. Cavallaro 108 Conn. 40,42;142 Atl. 391 (1928).

The defendants cite McKenna v. Whipple 97 Conn. 695 (1922) for the proposition that the disposition of the criminal charges is not admissible. Since it could not be possible to

require as an element of the case that which is not admissible, it is apparent that the Supreme Court of Connecticut in deciding Cavallaro did not have the **McKenna** exclusion in mind. All that **McKenna** stands for is"the fact that the arrested party was discharged upon trial does not necessarily prove that the arresting officer had no cause for arrest." Wright; Conn. Law of Torts 2nd Ed. Page 17 (emphasis added) "The trial court held that the acquittal of plaintiff upon the charge of intoxication, conclusively established the fact that he was not intoxicated at the time charged. This is not the law." McKenna at 700-701 (emphasis added)

Tha' instruction is precisely the one which the court gave when the fact was introduced into evidence. It was further pointed out by the court that the time of disposition actually limited the liability of the defendants and therefore could hardly be considered harmful.

Surprisingly, defendants ignore Cavallaro, a Connecticut case, but cite the California case, Beckner v. Sears Roebuck, 4 C.A. 3d 504; 84 Cal. Rptr. 315 (1970) for the proposition:

> "It was error...to admit into evidence the municipal court file which showed plaintiff had been acquitted."
> (Defendant's brief page 12)

The reference to Beckner is even more surprising when one reads the case. It was not an action for false arrest but for wrongful interference with a contract and causing Plaintiff to be discharged. (at 506) Evidence re commission of an alleged

crime was stricken apparently because the trial judge thought acquittal was res judiata on the issue of whether Plaintiff did the act reported.(at 508-9). An accurate quotation of the court's ruling on the point at issue is:

> "It was error to strike out the testimony of Fitzgerald that Plaintiff committed petty theft and to admit into evidence the municipal court file which showed plaintiff had been acquitted."
>
> (the underlined material was left out of the quotation in Defendants' brief)

In the present case, all parties had a full opportunity to present everything they wished.

Under the Federal Rules of Evidence, it was clearly for the court to determine whether the circumstances surrounding determination of criminal charges should have gone to the jury with appropriate instructions.

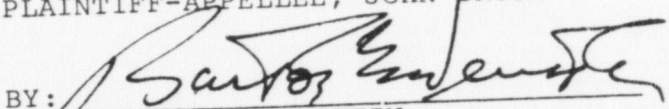
## V

## CONCLUSION

Since the jury rendered a verdict subject to appropriate instructions on a question of fact within its competence that verdict should be sustained.

RESPECTFULLY SUBMITTED,

PLAINTIFF-APPELLEE, JOHN CROOM

BY: 

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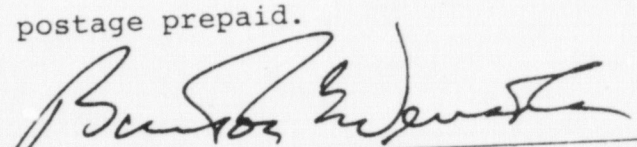

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